

January 19, 1999



OFFICE OF THE
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STATE OF TEXAS

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Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
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Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121371.

Dallas Area Rapid Transit (the "transit") received a request for the Employee Election Forms for Sick and Vacation Balance Conversion for 49 named employees. You state that portions of the requested forms are protected from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the highlighted information.

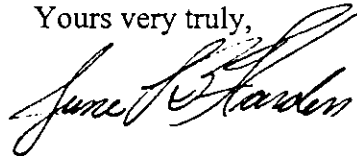
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of his salary to a voluntary investment program offered by

their employer is a personal investment decision, and information about it is excepted from disclosure by a common-law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Open Records Decision No. 600 (1992). Since the information at issue relates to the employees' contributions to a voluntary investment program, we believe that the highlighted information is protected by a right of privacy. Therefore, the highlighted information must be withheld under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 121371

Enclosures: Submitted documents

cc: Mr. L. C. Hatcher
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(w/o enclosures)